



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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**JUL 14 2017**

RE: MUR 7257 (AR 17-02)  
TeaPartyExpress.org and  
Kelly Lawler in her official  
capacity as treasurer

Dear Ms. Mitchell:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On February 2, 2017, the Commission notified the Committee that it was being referred to the Commission's Office of General Counsel for possible enforcement action under 52 U.S.C. § 30109. On June 21, 2017, the Commission found reason to believe that the Committee violated 52 U.S.C. §§ 30104(b)(4)(H)(iii), (b)(8), and (g), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law. Enclosed is a conciliation agreement for your clients' consideration

Please note that you and your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified in writing that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Derek Ross, the attorney assigned to this matter, at (202) 694-1579, or (800) 424-9530, or [dross@fec.gov](mailto:dross@fec.gov), within seven days of receipt of this letter. During conciliation, you and your clients may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, the Commission may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at [http://www.fec.gov/em/respondent\\_guide.pdf](http://www.fec.gov/em/respondent_guide.pdf).

In the meantime, this matter will remain confidential in accordance with 52 U.S.C. §§ 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

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<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).



1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**

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4 **RESPONDENTS:** TeaPartyExpress.org and Kelly Lawler AR 17-02  
5 in her official capacity as treasurer  
6

7 **I. INTRODUCTION**  
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9 This matter arises from the Commission's audit of the 2012 election cycle activity of  
10 TeaPartyExpress.org and Kelly Lawler in her official capacity as treasurer ("the Committee").<sup>1</sup>  
11 On January 6, 2017, the Commission approved the Final Audit Report and the Audit Division  
12 referred two findings to the Office of General Counsel ("OGC") for possible enforcement action:  
13 1) failure to file 24-Hour and 48-Hour Reports of independent expenditures ("IEs") totaling  
14 \$876,525, and 2) failure to itemize \$310,561 in debts and obligations.

15 For the reasons that follow, and based on the facts, analysis, and findings set forth in the  
16 Final Audit Report, which is herein incorporated by reference, the Commission finds reason to  
17 believe that the Committee violated 52 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-  
18 Hour and 48-Hour Reports of independent expenditures, and violated 52 U.S.C. § 30104(b)(8)  
19 by failing to itemize debts and obligations.

20 **II. FACTUAL AND LEGAL ANALYSIS**

21 **A. Reporting of Independent Expenditures**

22 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee  
23 treasurers to file reports of disbursements in accordance with the provisions of 52 U.S.C.  
24 § 30104(b).<sup>2</sup> This requirement includes reporting independent expenditures ("IEs") made by  
25 political committees other than authorized committees.<sup>3</sup> Every political committee that makes

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<sup>1</sup> See Attach. 1, Final Audit Report.

<sup>2</sup> 52 U.S.C. § 30104(a)(1).

1 IEs must report them in its regularly scheduled disclosure reports in accordance with 11 C.F.R.  
2 § 104.3(b)(3)(vii).<sup>4</sup> In addition, political committees that make IEs aggregating \$1,000 or more  
3 with respect to a given election after the 20th day, but more than 24 hours before the date of that  
4 election, must disclose them within 24 hours following the date of dissemination.<sup>5</sup> These  
5 reports, known as 24-Hour Reports, must be filed within 24 hours after each time it makes or  
6 contracts to make IEs aggregating an additional \$1,000.<sup>6</sup>

7 A political committee that makes or contracts to make IEs aggregating \$10,000 or more  
8 for an election in any calendar year, up to and including the 20th day before an election, must  
9 report these expenditures within 48 hours.<sup>7</sup> These reports, known as 48-Hour Reports, must be  
10 filed by the end of the second day “following the date on which a communication that constitutes  
11 an independent expenditure is publicly distributed or otherwise publicly disseminated.”<sup>8</sup>

12 During the 2012 election cycle, the Committee disclosed \$680,735 as IEs on its quarterly  
13 reports, but failed to file 24-Hour or 48-Hour Reports for \$28,003 of those IEs.<sup>9</sup> The Committee

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<sup>3</sup> 52 U.S.C. § 30104(b)(4)(H)(iii), *see also* 11 C.F.R. § 104.3(b)(1)(vii).

<sup>4</sup> 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule E the name of a person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year in connection with an IE by the reporting committee. The report also must disclose the date, amount, and purpose of any such IE and include a statement that indicates whether such IE is in support of or in opposition to a candidate, as well as the name and office sought by such candidate. IEs of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id.*, *see also* 11 C.F.R. § 104.3(b)(3)(vii).

<sup>5</sup> 52 U.S.C. § 30104(g)(1); 11 C.F.R. § 104.4(c).

<sup>6</sup> 11 C.F.R. § 104.4(c).

<sup>7</sup> 52 U.S.C. § 30104(g)(2); 11 C.F.R. § 104.4(b)(2).

<sup>8</sup> 11 C.F.R. § 104.4(b)(2).

<sup>9</sup> Attach. 1, Final Audit Report at 10-12.

1 also reported \$848,522 of apparent IEs as operating expenditures or other disbursements on its  
2 quarterly reports, but failed to file 24-Hour or 48-Hour Reports for any of them.<sup>10</sup>

3 The Interim Audit Report recommended that the Committee provide documentation to  
4 show that the 24-Hour or 48-Hour Reports for the \$848,522 in apparent IEs were timely filed or  
5 not required.<sup>11</sup> The Committee, however, did not submit a response to the Interim Audit Report.  
6 In response to the Draft Final Audit Report, the Committee stated that many of the  
7 communications identified as IEs were actually fundraising communications that were not  
8 reportable as IEs, but no documentation was provided to support this assertion.<sup>12</sup>

9 The Commission approved a finding that the Committee did not file 24-Hour or 48-Hour  
10 Reports for IEs totaling \$848,522 that were reported as operating expenditures or other  
11 disbursements, and failed to file 24-Hour or 48-Hour Reports for an additional \$28,003 in IEs  
12 reported on Schedule E.<sup>13</sup> The Audit Division referred these findings to OGC for possible  
13 enforcement action.

14 In its Response to the Notice of Referral,<sup>14</sup> the Committee asserted that the total IEs the  
15 Committee failed to disclose in 24-Hour or 48-Hour Reports is actually \$337,561.68.<sup>15</sup> The  
16 Committee also reiterated its argument that the communications were not “public  
17 communications” but were instead fundraising solicitations sent to its prior donors.<sup>16</sup> However,

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Notice of Referral, AR 17-02 (Feb. 2, 2017).

<sup>15</sup> See TeaPartyExpress.org Resp. (Apr. 17, 2017).

<sup>16</sup> *Id.* at 1-2.

1 the Committee, despite repeated opportunities, has not provided documentation, including the  
2 actual communications in question, or other information to support its assertion that the IEs  
3 identified by the Audit Division were not required to be reported on 24-Hour or 48-Hour  
4 Reports. Accordingly, the Commission finds reason to believe that the Committee violated 52  
5 U.S.C. § 30104(b)(4)(H)(iii) and (g) by failing to file 24-Hour and 48-Hour Reports for \$876,525  
6 in IEs.

7 **B. Failure to Itemize Debts and Obligations**

8 The Act and Commission regulations require political committees to disclose the amount  
9 and nature of its outstanding debts and obligations until those obligations are extinguished.<sup>17</sup> A  
10 political committee must file separate schedules for debts owed by and to the committee with a  
11 statement explaining the circumstances and conditions under which each debt and obligation was  
12 incurred and extinguished.<sup>18</sup> A debt of \$500 or less must be reported at the time that payment  
13 was made or within 60 days of the date the political committee incurs the debts, whichever  
14 comes first, and a debt exceeding \$500 must be disclosed in the report that covers the date on  
15 which the debt was incurred.<sup>19</sup>

16 The Audit Division identified \$310,561 in debts and obligations pertaining to IEs that the  
17 Committee did not disclose in its disclosure reports.<sup>20</sup> The amounts were owed to 19 vendors,  
18 ranged from 34 to 207 days outstanding, and included both unreported and understated debts.<sup>21</sup>  
19 The Committee did not respond to the Interim Audit Report, which recommended that the

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<sup>17</sup> 52 U.S.C. § 30104(b)(8); 11 C.F.R. §§ 104.3(d), 104.11(a).

<sup>18</sup> See 11 C.F.R. § 104.11(a).

<sup>19</sup> 11 C.F.R. § 104.11(b).

<sup>20</sup> Attach. 1, Final Audit Report at 18.

<sup>21</sup> *Id.*

1 Committee provide documentation to demonstrate that the debts did not require reporting, were  
2 properly reported, or amend its filings to properly disclose its debts.<sup>22</sup> The Commission  
3 approved the Audit Divisions findings, and they were referred to OGC for possible enforcement  
4 action.

5 In its Response to the Notice of Referral, the Committee does not dispute the Audit  
6 Division's findings, but states that the reporting error arose out of an issue between it and its  
7 direct mail vendors which has since been corrected.<sup>23</sup> Throughout the audit process the  
8 Committee has been repeatedly instructed to amend its filings, and it indicated its willingness to  
9 do so, but has not made the necessary amendments.<sup>24</sup> Accordingly, the Commission finds that  
10 there is reason to believe the Committee failed to properly disclose its debts and obligations in  
11 violation of 52 U.S.C. § 30104(b)(8).

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<sup>22</sup> *Id.* at 19.

<sup>23</sup> *Resp.* at 2-3.

<sup>24</sup> *See id.* at 2.